

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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IN RE WESTERN STATES WHOLESALE
NATURAL GAS ANTITRUST
LITIGATION,

MDL Docket No. 1566

Base Case No. 2:03-cv-01431-RCJ-PAL

ORDER

(Mot. to Seal – ECF No. 2331)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

12 This matter is before the court on Defendant Xcel Energy, Inc.’s failure to respond to the
13 court’s Order (ECF No. 2378) denying the Motion to Seal (ECF No. 2331) filed by Plaintiff
14 Sinclair Oil Corporation (“Sinclair”) without prejudice and instructing the designating party (or
15 parties) to file a memorandum of points and authorities and any supporting declaration or
16 affidavit to make a particularized showing as to why certain documents should remain under
17 seal.

18 Sinclair sought leave to file under seal because counsel for Xcel Energy, Inc. (“Xcel
19 Energy”) designated certain documents as confidential. Sinclair referenced the documents as
20 Exhibits A and B in its Reply (ECF No. 2330) in support of its Motion to Compel Defendants
21 ePrime, Inc. and Xcel Energy, Inc. to Respond to Discovery Requests and for Sanctions. *See*
22 Notice of Filing Under Seal (ECF No. 2332). The court instructed the designating party (or
23 parties) to make a particularized showing on or before May 13, 2016. *See* Order (ECF
24 No. 2378).

25 Although the court did not address this in the Order (ECF No. 2378), Sinclair's Notice of
26 Filing Under Seal (ECF No. 2332) violates LR IC 2-2(a), LR IA 10-3, and the court's Order
27 (ECF No. 2257), which instructed the parties how to electronically file documents in CM/ECF
28 for which they request sealing. The order states that *each document/exhibit* must be

1 electronically filed as “separate attachments from the main document in CM/ECF.” Order (ECF
 2 No. 2257) at 2. In other words, each exhibit must be filed as a sub-document to the main filing.
 3 For example, a main document such as a notice of sealed exhibits would receive the main docket
 4 number (e.g., ECF No. 100), while each exhibit will receive a sequenced sub-docket number
 5 (e.g., Exhibit A (ECF No. 100-1), Exhibit B (ECF No. 100-2), Exhibit C (ECF No. 100-3), and
 6 so forth). By combining the notice and exhibits into one PDF file and then filing that single PDF
 7 as the “main document,” Sinclair has made it “impossible for the Clerk of the Court to unseal
 8 any documents the court finds should not be sealed because the docketing clerks cannot separate
 9 the pages for sealing purposes.” *Id.* As explained below, the court’s review this matter was
 10 complicated by Sinclair’s failure to properly file the sealed exhibits, and Sinclair will be required
 11 to refile Exhibit A.

12 On May 13, 2016, the parties filed a Joint Motion (ECF No. 2402) responding to the
 13 court’s Order (ECF No. 2378) and the Minutes of Proceedings (ECF No. 2385) for the Status
 14 Conference held on April 26, 2016. The Joint Motion asked the court to “substitute” a redacted
 15 Exhibit B for a document filed with Sinclair’s Reply (ECF No. 2330), which stated “Pages Filed
 16 Under Seal.” For good cause appearing, the court approved the parties’ Joint Motion. *See* Order
 17 (ECF No. 2417).¹ Thus, the redacted Exhibit B (ECF No. 2402-1) effectively (but not
 18 electronically) replaced the page insert noting the sealed filing, *see* (ECF No. 2330-2) at 4.

19 Although the parties addressed Exhibit B in the Joint Motion, that filing did not include a
 20 particularized showing for Exhibit A to remain under seal. The designating party (or parties) did
 21 not file memorandum of points and authorities or any supporting declaration or affidavit
 22 indicating why Exhibit A should remain under seal, and the deadline to do so has now expired.
 23 The parties were cautioned that if they failed to timely comply with the Order, the Clerk of the
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25 ¹ In light of this Order, the court clarifies the effect of its prior Order (ECF No. 2417) on Exhibit B. Just
 26 as the docketing clerks are unable to separate pages for sealing purposes, *see* Order (ECF No. 2257) at 2,
 27 the docketing clerks cannot “substitute” documents on the record. Once a document is filed, it remains on
 the docket unless the court expressly strikes the document from the record. Rather, the court views a
 substituted document as though it was filed in the first instance. Because the court granted the Joint
 Motion, the redacted Exhibit B (ECF No. 2402-1) became part of the public record is now considered in
 place of the page insert noting the sealed filing, *see* (ECF No. 2330-2) at 4. However, the redacted
 Exhibit B did not electronically replace the page insert.

1 Court would be directed to unseal the documents to make them available on the public docket.
2 However, because Sinclair did not properly file Exhibits A and B as separate attachments from
3 the Notice (ECF No. 2332), the court cannot direct the docketing clerks to simply unseal Exhibit
4 A and leave Exhibit B under seal. Sinclair will therefore be required to refile Exhibit A on the
5 public docket and link the new filing to its underlying Reply (ECF No. 2330) in support of its
6 Motion to Compel.

7 Accordingly,

8 **IT IS ORDERED:**

9 1. Plaintiff Sinclair Oil Corporation shall REFILE Exhibit A to Notice of Filing Under
10 Seal (ECF No. 2332) and LINK the new filing in CM/ECF to its underlying Reply
11 (ECF No. 2330) in support of its Motion to Compel by **September 20, 2016**.
12 2. In any future filings, the parties are instructed to comply with LR IC 2-2(a), LR IA
13 10-3, and the court's Order (ECF No. 2257).

14 Dated this 13th day of September, 2016.

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16 PEGGY A. TEES
17 UNITED STATES MAGISTRATE JUDGE
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